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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

August 17, 1989

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer -

National Security Council (Hughes x3723)	249
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SUBJECT: State prepared issue papers on Legislation relating to
Missile Technology Control Regime Sanctions (H.R. 2461, as
passed the House Title XII Part E, S1227 and S1421).

The Office of Management and Budget requests the views of your
agency on the above subject before advising on its relationship
to the program of the President, in accordance with OMB Circular
A-19.

A response to this request for your views is needed no later than
THURSDAY, AUGUST 31, 1989.

Questions should be referred to SUE THAU/ANNETTE ROONEY
(395-7300), the legislative analyst in this office.

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosure

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J. NIX

SPECIAL

Summary of Berman & Gore/McCain Bills

Purpose

The Act imposes sanctions on U.S. and foreign companies that engage in trade in violation of the MTCR, and on developing countries which deploy missile systems.

Sanctions

The following sanctions apply for at least 2, and not more than 5, years when the President determines there is "reliable evidence" that:

- a U.S. or foreign person (defined broadly to include any governmental entity operating as a business and any communist government activity) is involved in an MTCR transaction that would violate U.S. export control laws or that would have been denied by the USG:

- denial of all export licenses; and/or
- USG procurement ban.
- [Gore adds an import ban for foreign companies.]

(If the violation is an initial one and "nondestabilizing," sanctions apply only to MTCR items.)

- a "developing country" imports MTCR items or missile systems, or equips its forces with missile systems:

- denial or reduction of all technical assistance in aviation, electronics, missiles, or space systems or equipment; and/or
- denial of exports of some/all of these technologies.
- [Gore would also ban the import of these items, and could be read to sanction any non-MTCR country (whether "developing" or not) that develops or deploys destabilizing missile systems.]

Exemption/Waiver

Provisions do not apply to a national of an MTCR country who has an export license issued by that country. Sanctions may be waived if the President certifies to Congress that the product or service is essential to U.S. national security, the supplier is the sole source, and the end-user is the USG.

Reports

The bill requires a detailed biannual report on all countries' efforts to acquire long range missiles and destabilizing offensive aircraft, including present and future capability to produce and deliver such weapons and efforts to assist other countries in this regard; and on all companies that have aided, or continue to aid, any country in such efforts. There is an exception for disclosing intelligence information when stringent criteria are met.

Miscellaneous

The bill requires Commerce to refer all MTCR applications for non-USML items to State to review, in consultation with DOD.

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Missile Technology Control Regime Sanctions Legislation
Berman and Gore Bills

I. SUMMARY OF BILLS

A. Sanctions Against Companies

The House passed Berman bill and the recently introduced Gore/McCain bill in the Senate both impose sanctions against companies or persons that the USG determines violate MTCR guidelines and against less developed states or entities that import MTCR items in violation of MTCR guidelines. The sanctions apply to both U.S. and foreign persons (foreign persons are defined to include government entities operating as business enterprises). The sanctions for U.S. persons are either or both of the following: 1) denial of any future export licenses under the AECA or the EAA and 2) prohibiting USG procurement from the company. The sanctions for foreign persons are either or both of the following : 1) denial of any future export licenses under the AECA or the EAA in which the foreign person is the designated end-user or consignee and 2) no USG procurement (Gore/McCain adds an import ban as well).

The sanctions only apply to export licenses or USG procurement of MTCR items for either foreign or U.S. persons if the President determines that the violation is an initial violation and is "nondestabilizing". Sanctions are not applied at all to a foreign person if: 1) the foreign person is a national of an MTCR country (in the case of a company, the company must be organized under the laws of an MTCR country) and 2) the MTCR country has issued an export license for the trading activity in question.

B. Sanctions Against Foreign Countries

In addition to the company sanctions, the bills provide for foreign country sanctions whenever the President determines that a "developing state or entity" has developed and deployed destabilizing offensive missiles that may be used to deliver weapons of mass destruction. The sanctions are: a) denying or reducing all technical assistance in aviation, electronics, missiles, or space systems or equipment under the control of the USG and and b) denying transfer of all or selected technology in aviation, electronics, missiles, or space systems or equipment under the control of the USG.

C. Miscellaneous Provisions

The bills require Commerce to refer all EAA license applications involving MTCR items to State, acting in consultation with Defense. They also contain detailed reporting requirements (with, however, limited qualifications for withholding material that would seriously jeopardize national security, undermine existing efforts to achieve MTCR policy objectives and compromise sensitive intelligence operations).

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II. BASIC ISSUE

The MTCR was established with the clear understanding that each partner retained its ultimate authority to grant or deny exports. Unlike COCOM, agreement was never reached on a list of specific items that would be prohibited for export either to particular countries or specific projects. In place of such specific prohibitions, the partners agreed only to consider certain general factors as part of broadly worded MTCR guidelines and to consult on specific cases.

The Toshiba type sanctions taken from the COCOM model (whatever its merits in that context), therefore simply do not work well with MTCR. Unilateral U.S. sanctions are fundamentally inconsistent with the MTCR approach and their imposition would likely seriously undermine the regime precisely at the time we need to strengthen it.

The bills drafters have attempted to partially address the charge of U.S. unilateralism by including a provision that eliminates sanctions when an MTCR national's activities have been licensed by an MTCR country. While an improvement, this provision do not alleviate the basic problem that the MTCR partners will view any USG imposed sanctions as inconsistent with the MTCR understandings. Moreover, this solution creates additional problems that can best be illustrated by several hypothetical scenarios:

1) MTCR company exports an item from an MTCR country without an export license when that country requires such a license. In this instance, there has been a violation of the foreign country's export laws and, if the country has not done so already, our first course of action would normally be to ensure that government takes actions to enforce its own laws. The bills, however, contain no provision for even consulting with the other government, let alone not imposing sanctions when that government pursues its own enforcement action. U.S. sanctions thus remain unilateral as well as possibly redundant.

2) MTCR company exports an item from an MTCR country without an export licence and under the laws of that country no license was required. Here the USG would be sanctioning the company for something it did in full compliance with its own laws. Given that we have yet to reach internal USG consensus on exactly what items fall on the MTCR list, it's entirely possible that there is a good faith disagreement between the USG and the other MTCR partner on whether and when a license should be required. Normally, the first step would be to consult with the foreign government to reach a consensus on whether the item is properly classified as an MTCR item.

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Again, however, the bills would mandate sanctions without any consultation and the U.S. is perceived as operating in a unilateral manner that itself violates the MTCR.

3) Non-MTCR company exports an item from a MTCR country with that government's export authorization. The bills would sanction a foreign company or subsidiary operating within an MTCR country when it is not organized under the laws of that country even when it has received an export license. Thus a Swiss company operating entirely within the FRG, exporting an item with full authorization from the FRG would be sanctioned, simply because it was organized under Swiss rather than FRG laws. Such a result is not only arbitrary, but is inconsistent with the jurisdictional principles underlying export control laws, including our own. We assert jurisdiction over any exports from the U.S., regardless of whether the exporter happens to be a U.S. person or a foreign person.

III. SPECIFIC PROBLEMS (references are to Berman bill as passed, Gore bill contains similar provisions)

A. Section 1241(c). This provision sets out as USG policy unilateral action and assumes multilateral efforts to date have been ineffective.

B. Section 1242(a). This section provides for automatic and mandatory triggering of at least one applicable sanction whenever the President determines there is "reliable evidence" that one of the specified violations has occurred. With respect to violations by U.S. persons, the section is duplicative of existing penalties and has no deterrent value. With respect to foreign persons, their actions might be entirely consistent with local law, yet still trigger sanctions (see above discussion). No provision is made for taking into account U.S. security interests in the initial determination nor is there any provision for consultation with the host government. The determinations single out "developing countries" in a discriminatory way that will hinder, rather than help, our efforts to seek the cooperation of such countries in stemming missile proliferation. As a result, Presidential discretion is severely limited.

Section 1242(c). The waiver contained in this provision is extremely narrow and does not even cover the exceptions provided for in the Toshiba sanctions. There is no waiver at all unless the end-user for the product is the USG.

Section 1243(a). Requiring a report every 180 days is unduly burdensome.

Section 1243(b). The contents required in the report do not distinguish between efforts of friendly and allied governments and those of countries of concern.

Section 1243(c). The exception contained in subparagraph (2) requires that all three conditions be met before any sensitive intelligence information can be withheld. Such a narrow exception does not provide sufficient discretion to adequately protect sensitive intelligence sources and methods.

Summary of Bingaman Bill (S-1227)
(Referred to SFRC)

Purpose

The Act restricts the transfer and development of missiles and related equipment and technology and seeks to strengthen the MTCR by broadening its scope and the level of participation.

Export Controls

The bill amends the Export Administration Act to require a validated export license for all items on the Annex (that are not on the U.S. Munitions List), and that all such applications be referred to State and DOD for review.

Sanctions

If State finds, after consulting with DOD, that a U.S or foreign firm or entity has transferred missile equipment or technology "in violation of the MTCR guidelines," it shall deny arms export licenses for the transfer of missile equipment or technology (the bill's summary indicates that a USG procurement ban would also apply).

Commerce must deny a license if the exporter or recipient has transferred items in violation of MTCR guidelines; or the end-user is Iran, Syria, Libya, Iraq or facility in a non-MTCR country that is designed to develop offensive missiles for export.

Waiver

Transfers may be approved if the appropriate Secretary certifies to Congress that such action would not be inconsistent with the purpose of the Act.

Reports

The bill requires comprehensive annual reports by State and Commerce on missile activity of non-MTCR countries, U.S. exports, and demarches. Nothing requires the release of information that would jeopardize national security, undermine policy objectives or compromise sensitive intelligence information.

MTCR SANCTION BILLS: BINGAMAN
Specific Problems

A. Section 4 (amends the Arms Export Control Act).

Section 71. The goal of broadening the MTCR and expanding its membership are undermined by using the regime to trigger application of unilateral U.S. sanctions.

Section 72. U.S. and foreign firms, and foreign state entities, who transfer missile equipment and technology "in violation of MTCR guidelines" are subject to automatic, mandatory sanctions. It is unclear what constitutes a violation of the MTCR guidelines, as each partner retains the discretionary authority to grant or to deny an export after reviewing the destination, end-use and given assurances, among other factors. The legislation requires the Secretary (of State, presumably) to deny transfers of missile equipment and technology to sanctioned domestic firms, and transfers by sanctioned foreign firms or state entities. Although ambiguously drafted, the explanation accompanying the bill indicates the sanctions are intended to include denial of government contracts involving missile equipment and technology. With regard to U.S. persons, the section is duplicative of existing penalties and has no deterrent value. With respect to foreign persons, their actions might be entirely consistent with local law, yet still trigger sanctions. No provision is made for taking U.S. security interests into account in determining whether to impose sanctions, nor is there any provision for consultation and coordination with the host government. While there is broad waiver authority for particular transactions, which permits the Secretary of State to certify to Congress that the proposed transfer would not be inconsistent with the MTCR Act's purpose, there is no provision for removing the sanctions in their entirety.

Section 73 requires an annual report on transfers of MTCR items to non-MTCR countries, including the status of such countries' missile programs. The report does not distinguish between the efforts of friendly and allied governments and countries of concern.

B. Section 5 (amends the Export Administration Act)

Commerce is required to deny export license applications if the applicant or end-user has transferred a MTCR item in violation of the guidelines; the end-user is Iran, Iraq, Syria, Libya or a missile facility in a non-MTCR country. As a practical matter, Commerce should not now be licensing items under these circumstances. These sanctions are subject to the same broad waiver authority. The same concerns about using the MTCR guidelines to trigger sanctions, and the absence of removal authority, also apply here.

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COMPARISON OF BERMAN/GORE* v. BINGAMAN

I. Sanctions on U.S. and Foreign Persons

A. MTCR Link

Berman uses the standard of whether the USG would deny the particular export. This standard provides insufficient guidance to U.S. and foreign persons who cannot be presumed to have enough information to predict with any certainty what the final USG decision will be.

Bingaman uses the standard of whether the export is in violation of MTCR guidelines, which is arguably an even more nebulous standard because it requires exporters to predict the views of all seven partners.

B. Discretion

Both bills requires the imposition of sanctions when the executive branch determines that a violation has occurred, which provides inadequate discretionary authority. There is no provision for considering whether the violation was knowing or substantial, whether the host government has taken corrective measures, whether other MTCR partners believe guidelines were violated, or the impact on U.S. national security interests. Berman does permit the President to chose from a menu of sanctions, but he must chose one. It is unclear from the language whether Bingaman imposes only one sanction -- denial of arms and dual-use export licenses, or the additional sanction of a USG procurement ban.

C. Scope

Berman defines "person" broadly to include governmental entities operating as a business, and communist governments, which may subject foreign countries to denial of export licenses and USG procurement. The Berman sanctions apply to all export licenses and procurement contracts.

Bingaman sanctions apply to "foreign state entities," a term that it does not define. Bingaman sanctions are limited to transfers involving missile equipment and technology.

*The Berman and Gore bills are substantially the same. However, Gore adds the option of an import ban sanction against foreign companies. Gore also could be read to sanction any non-MTCR country (whether "developing" or not) that develops or deploys destabilizing missile systems.

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D. Waiver

The Berman standard is extremely difficult to satisfy; one of three criteria is that the USG be the end-user. Unlike the Toshiba sanctions, there are no exceptions for spare parts, contract sanctity, etc. The Bingaman standard of "not inconsistent with the purpose of the [MTCR] Act" is far easier to meet. Neither bill provides for removal of sanctions, except by using the waiver on a case-by-case basis.

E. Exemption:

With Berman, sanctions do not apply to a national of a MTCR country who has an export license issued by that country. Bingaman has no such exemption.

II. Sanctions Against Foreign Countries

Berman imposes automatic sanctions on developing countries, although the scope of the sanctions are limited to goods and technology that could assist missile proliferation. Bingaman does not sanction foreign countries directly.

III. Export Controls

Both bills require Commerce to staff MTCR license applications to State to review, in consultation with DOD.

IV. Reporting Requirements

Berman requires two comprehensive reports to Congress each year, with insufficient protection for intelligence sources and methods. Bingaman requires only one report, with better protection for intelligence information. Neither bill draws a distinction between reporting on the status of missile programs of friendly and allied countries, and those of concern.

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TALKERS: MTCR SANCTION BILLS
BERMAN/GORE

I. SUMMARY

- Inadequate consideration by appropriate committees and floor.
- Sanctions on U.S. persons are redundant.
- Unilateral U.S. sanctions against foreign companies and countries that are linked to a voluntary multilateral arrangement will be detrimental to the objective of stemming missile proliferation, by undermining cooperation among partners and discouraging other governments from adhering to the MTCR.

II PROCESS

- We are concerned that legislation on a matter as critical and complex as missile proliferation is proposed for floor action without benefit of hearings and mark-up by the committee of jurisdiction.
 - The hearings held concerned missile proliferation in general, and not the proposed legislation.
 - There has been no mark-up or substantive floor debate.

III. SUBSTANCE

A. Effect on U.S. Persons

- Sanctions against U.S. persons duplicate existing penalties; thus, the deterrent effect is unclear.
- Under the Arms Export Control Act (AECA) and the Export Administration Act (EAA), U.S. persons are already subject to serious criminal, civil and administrative penalties.
- For example, a person convicted of exporting missile equipment in violation of the AECA faces up to 10 years in prison and a \$1 million fine. In addition, he is unable to obtain arms export licenses. (FYI: A person convicted of violating the EAA also faces serious criminal penalties, and can be denied dual-use export licenses.)

B. Effect on Foreign Persons

- The MTCR is not structured to provide sufficient guidance to determine whether the U.S. would grant or deny a particular export.

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-- Under the MTCR guidelines, each country bases its decision on a variety of factors, including the destination, the end-use and the given assurances.

-- Unlike COCOM, there is no list of proscribed destinations.

-- Foreign persons in non-MTCR countries can hardly be presumed to have knowledge of MTCR restrictions.

-- Even a company in a MTCR country -- who has obtained a license from another MTCR government or who has been informed by its host government that a license was unnecessary -- would have to predict whether the U.S. would deny the export. It is insufficient to check only the host government's laws, and irrelevant that the export may be perfectly legal under those laws.

-- The issue of guessing whether the U.S. would deny a particular export is further complicated by the fact that our EAA-based MTCR controls do not apply if there are contracts or previous licenses issued that pre-date USG imposition of the controls.

-- Contract sanctity significantly complicates the foreign person's calculation (who now must be presumed to have knowledge of whether our controls were imposed under the AECA (no contract sanctity issue) or under the EAA (contract sanctity applies) as well as the date we implemented the relevant control).

-- Contract sanctity also puts the U.S. in the embarrassing position of setting itself up as the sole, world-wide policeman for the MTCR at the same time we are forced to authorize exports due to EAA provisions that some could argue conflict with MTCR principles.

C. MTCR Partners' View

-- The U.S. is changing dramatically the rules of the MTCR by adding a troubling new dimension -- unilateral U.S. sanctions.

-- In 1987, Economic Summit partners made a voluntary, non-binding commitment to limit the risks of missile proliferation by controlling certain transfers -- sanctions, especially unilateral U.S. sanctions, were not part of the bargain.

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-- Yet, two years later, the U.S. establishes an additional enforcement mechanism, without consultation or coordination, to punish developing countries, foreign companies in non-MTCR countries, and even certain companies in MTCR countries.

-- One could even argue that such sanctions are inconsistent with the MTCR, by which partners control transfers "in accordance with national legislation," i.e., each country establishes and enforces its own set of laws and regulations.

D. Effect on MTCR

-- The threat of sanctions will be detrimental to the MTCR because partners will now have a strong incentive to stymie any U.S. efforts to enlarge the scope of the MTCR annex -- a vote for expansion would be a vote for U.S. sanctions.

-- The threat of sanctions will have an immediate, chilling effect on the exchange of information among partners that is essential to effective implementation of the MTCR.

-- Partners will be reluctant to share information that could subject their companies to U.S. sanctions.

-- Pressuring other countries to join the MTCR will not only place partners in an awkward position but, if admitted, will limit the kind of information that can be exchanged.

-- Unilateral U.S. sanctions will further undermine the MTCR objectives of multilateral cooperation by discouraging other countries from joining or from adhering to the regime.

E. Foreign Governments' Reaction

-- By exempting foreign companies in MTCR countries which obtain export licenses from their host government, the legislation attempts to provide an incentive to join the MTCR. In reality, however, the U.S. would be seeking to coerce foreign governments into participating in an allegedly voluntary regime. This irony will not be lost on our friends and allies.

-- Non-MTCR countries will be reluctant to associate themselves with a regime that imposes sanctions against other countries and their companies.

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-- MTCR partners may even want to disassociate themselves from a regime where U.S. sanctions are the enforcement mechanism.

-- Foreign governments will object to the U.S. second-guessing their decision to grant an export license and that the U.S. is sanctioning companies that are acting consistent with their host government's laws.

-- Foreign governments may even be reluctant to enforce their export control laws by investigating and prosecuting possible violations, when such action could trigger U.S. sanctions. The sanctions are imposed regardless of whether the host government has taken appropriate corrective action.

-- Enshrining a troubling distinction between developing countries and other countries in U.S. law will be diplomatically indefensible. (FYI: Such distinctions do exist in U.S. law, e.g., the AECA cuts off USG arms sales when "economically less developed" countries divert economic aid to military programs. However, this legislation would unilaterally impose a prohibition without such a U.S. nexus.)

-- Absent a U.S. monopoly on missile equipment and technology, seeking the cooperation of other countries is the only realistic approach to achieving our objectives.

-- Sanctions would not affect firms that do no business with the U.S.

-- Foreign governments, and not the U.S., are in the best position to enforce their own laws.

F. Other Problems

-- The President lacks sufficient discretion to determine whether, when and how to impose sanctions. Once he makes the determination that reliable evidence of a violation exists, he must impose one of the sanctions, regardless of its potential adverse impact on national security interests generally or on our missile non-proliferation efforts specifically.

-- The exceptions to the sanctions and the waiver authority fail to provide adequate flexibility.

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-- The reporting requirements do not distinguish between friendly and allied countries and countries of concern. They are also onerous.

-- The exceptions to the reporting requirements for certain sensitive intelligence information are too narrow to provide adequate protection for intelligence sources and methods.

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TALKERS: MTCR SANCTION BILLS
BINGAMAN

I. SUMMARY

- Inadequate consideration by appropriate committees and floor.
- Sanctions on U.S. persons are redundant.
- Unilateral U.S. sanctions against foreign companies that are linked to a voluntary multilateral arrangement will be detrimental to the objective of stemming missile proliferation, by undermining cooperation among partners and discouraging other governments from adhering to the MTCR.

II PROCESS

- We are concerned that legislation on a matter as critical and complex as missile proliferation is proposed for floor action without benefit of hearings and mark-up by the committee of jurisdiction.
 - The hearings held concerned missile proliferation in general, and not the proposed legislation.
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- Under the Arms Export Control Act (AECA) and the Export Administration Act (EAA), U.S. persons are already subject to serious criminal, civil and administrative penalties.
- For example, a person convicted of exporting missile equipment in violation of the AECA faces up to 10 years in prison and a \$1 million fine. In addition, he is unable to obtain arms export licenses. (FYI: A person convicted of violating the EAA also faces serious criminal penalties, and can be denied dual-use export licenses.)

B. Effect on Foreign Persons

- The MTCR is not structured to provide sufficient guidance to determine what transactions would violate the guidelines.

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-- Under the MTCR guidelines, each country bases its decision on a variety of factors, including the destination, the end-use and the given assurances.

-- Unlike COCOM, there is no list of proscribed destinations.

-- Foreign persons in MTCR countries will be unable to predict with much certainty whether the U.S. would view an export as a violation of MTCR guidelines; foreign persons in non-MTCR countries can hardly be presumed to have knowledge of MTCR restrictions or the U.S. interpretation of these restrictions.

-- The issue of guessing whether the U.S. would view an export as violating MTCR guidelines is further complicated by the fact that our EAA-based MTCR controls do not apply if there are contracts or previous licenses issued that pre-date USG imposition of the controls.

-- Contract sanctity significantly complicates the foreign person's calculation (who now must be presumed to have knowledge of whether our controls were imposed under the AECA (no contract sanctity issue) or under the EAA (contract sanctity applies) as well as the date we implemented the relevant control).

-- Contract sanctity also puts the U.S. in the embarrassing position of setting itself up as the sole, world-wide policeman for the MTCR at the same time we are forced to authorize exports due to EAA provisions that some could argue conflict with MTCR principles.

C. MTCR Partners' View

-- The U.S. is changing dramatically the rules of the MTCR by adding a troubling new dimension -- unilateral U.S. sanctions.

-- In 1987, Economic Summit partners made a voluntary, non-binding commitment to limit the risks of missile proliferation by controlling certain transfers -- sanctions, especially unilateral U.S. sanctions, were not part of the bargain.

- 3 -

-- Yet, two years later, the U.S. establishes an additional enforcement mechanism, without consultation or coordination, to punish foreign companies (in non-MTCR countries and MTCR countries).

-- One could even argue that such sanctions are inconsistent with the MTCR, by which partners control transfers "in accordance with national legislation," i.e., each country establishes and enforces its own set of laws and regulations.

D. Effect on MTCR

-- The threat of sanctions will be detrimental to the MTCR because partners will now have a strong incentive to stymie any U.S. efforts to enlarge the scope of the MTCR annex -- a vote for expansion would be a vote for U.S. sanctions.

-- The threat of sanctions will have an immediate, chilling effect on the exchange of information among partners that is essential to effective implementation of the MTCR.

-- Partners will be reluctant to share information that could subject their companies to U.S. sanctions.

-- Pressuring other countries to join the MTCR will not only place partners in an awkward position but, if admitted, will limit the kind of information that can be exchanged.

-- Unilateral U.S. sanctions will further undermine the MTCR objectives of multilateral cooperation by discouraging other countries from joining or from adhering to the regime.

E. Foreign Governments' Reaction

-- Non-MTCR countries will be reluctant to associate themselves with a regime that imposes sanctions against foreign companies.

-- MTCR partners may even want to disassociate themselves from a regime where U.S. sanctions are the enforcement mechanism.

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-- Foreign governments will object to the U.S. second-guessing their decision to grant an export license and that the U.S. is sanctioning companies that are acting consistent with their host government's laws.

-- Foreign governments may even be reluctant to enforce their export control laws by investigating and prosecuting possible violations, when such action could trigger U.S. sanctions. The sanctions are imposed regardless of whether the host government has taken appropriate corrective action.

-- Absent a U.S. monopoly on missile equipment and technology, seeking the cooperation of other countries is the only realistic approach to achieving our objectives.

-- Sanctions would not affect firms that do no business with the U.S.

-- Foreign governments, and not the U.S., are in the best position to enforce their own laws.

F. Other Problems

-- The President lacks sufficient discretion to determine whether, when and how to impose sanctions. Once he makes the determination that reliable evidence of a violation exists, he must impose sanctions, regardless of its potential adverse impact on national security interests generally or on our missile non-proliferation efforts specifically.

-- The reporting requirements do not distinguish between friendly and allied countries and countries of concern.

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